be, so long as he has not openly restored possession by surrender to his landlord."

Since the right to determine a continuing tenancy by a notice to quit is an inseparable incident to the tenancy, there is therefore no question here that the notice to deliver vacant possession dated December 29, 1975 was valid and effective. I agree therefore that the appeal should be allowed in the terms of the main judgment.

Appeal allowed.

Solicitors: *Jagathesan & Co.; S.E. Rajah & Co.*

LOH HOLDINGS SDN. BHD. v. PEGLIN DEVELOPMENT SDN. BHD. & ANOR.

[F.C. (Salleh Abas, L.P., Wan Suleiman & Seah F.JJ.) July 9, 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 74 of 1982]

Practice & Procedure – Conditional leave to appeal to Yang di-Pertuan Agong from decision of Federal Court – Interlocutory matter – Whether application should be allowed – Courts of Judicature Act, 1964, s. 74 (1 (b).

This was an application by the first respondent for conditional leave to appeal to the Yang di-Pertuan Agong from a decision of the Federal Court on an interlocutory matter. Counsel for the applicant/respondent submitted that albeit interlocutory, the matter concerned a tort of inducement to break a contract on which it is said there is no local decision just yet.

Held: (1) the court in Malaysia is perfectly entitled and capable to make the decision on the subject and will make it at the proper and appropriate stage of the proceedings. To allow this application at this stage of the proceedings would only serve to delay the trial of the suit for several years;

(2) a reference to the highest court for an opinion of what the law is on a given topic which would be raised at a trial to be conducted in a court below is too premature. Consulting an opinion on an anticipatory point of law is simply foreign to the Malaysian system except only on constitutional matters as provided for in Article 130 of the Federal Constitution.

FEDERAL COURT.

Raja Abdul Aziz Addruse for the appellant.

R. R. Chelliah (*Dennis Xavier* with him) for the respondent.

Cur. Adv. Vult.

Salleh Abas L.P. (delivering the Judgment of the Court): This is an application by the first respondent for conditional leave to appeal to His Majesty the Yang di-Pertuan Agong from the decision of this Court delivered on April 21, 1984.

The matter for which the application is made arose from the decision of Mr. Justice Wan Yahya allowing the respondents' application to strike out the appellant's statement of claim. This Court on appeal by the appellant overruled that decision.

Thus, the matter, which is the subject of the proposed appeal to His Majesty the Yang di-Pertuan Agong, is therefore an interlocutory one and unless we are satisfied that it is a fit one for appeal under section 74 (1) (b) of the Courts of Judicature Act, the application for conditional leave should be refused.

Mr. R.R. Chelliah, counsel for applicant/respondent, submitted that albeit interlocutory, the matter concerned a tort of inducement to break a contract on which, it is said, there is no local decision just yet. We do not think that the absence or lack of local decision on a matter which would be raised at a trial is a good ground for allowing this application. The court in this country is perfectly entitled and capable to make the decision on the subject and will, we are sure, make it at the proper and appropriate stage of the proceedings. To allow this application at this stage of the proceedings would only serve to delay the trial of the suit for several years.

A reference to the highest court for an opinion of what the law is on a given topic which would be raised at a trial to be conducted in a court below, in our view, is too premature. Our judicial system is not modelled on the Roman Law system where judges would resort to legal opinions given by *jurisconsulti* (legal experts) on an appropriate matter. Consulting an opinion on an anticipatory point of law is simply foreign to our system except only on constitutional matters as provided for in Article 130 of the Federal Constitution.

Hence, we do not consider the application to be a fit one under section 74 (1) (b) of the Courts of Judicature Act. It is therefore dismissed with costs.

Application dismissed.

Solicitors: *Vohrah & Tan Chee Lan; Dennis Xavier & Co.*